

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

SB 2494 – HB 2560

March 18, 2010

SUMMARY OF AMENDMENT (015177): Broadens the Class C felony offense of physical abuse or gross negligence to include a health care provider who deprives a patient of a controlled substance or any portion of the full prescribed dosage of a controlled substance that has been prescribed for the patient's care, comfort, pain or well-being when not in the course of professional practice. Defines "health care provider" as a person who is licensed, certified or otherwise authorized to administer health care and includes, but is not limited to, any physician, osteopathic physician, chiropractor, nurse, hospital personnel, mental health professional, other health care professional, employee of a health care provider, or a person who impersonates a health care provider.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures - \$1,065,900/Incarceration*

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Unchanged from the original fiscal note.

Assumptions applied to amendment:

- Currently it is a Class C felony offense knowingly to physically abuse or grossly neglect an impaired adult resulting in serious mental or physical harm.
- According to the Department of Health (DOH), there are 285,921 licensed health care professionals in the state. According to a *Herald Journal* newspaper article published September 7, 2008, 1.3 percent of registered nurses have faced some type of disciplinary action for drug-related offenses. The Department of Correction (DOC) estimates 1.3 percent of the total (3,717) would currently be convicted of the Class E felony offense of conspiracy to obtain drugs by fraud or theft of property with a value of \$500 to \$1,000. DOC estimates one percent of those (37) would be convicted of a Class C felony offense rather than a Class E and would serve an additional 1.95 years as a result of this bill.
- According to the U. S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will result in four additional offenders in the tenth year.

- According to DOC, the average operating cost per offender per day for calendar year 2010 is \$59.86. The average post-conviction time served for a Class C felony is 3.26 years (1,190.72 days) and 1.31 years (478.48 days) for a Class E. The cost per offender at 3.26 years is \$71,276.50 (1,190.72 days x \$59.86) and the cost per offender at 1.31 years is \$28,641.81 (478.48 days). The additional cost per offender to serve an additional 1.95 years is \$42,634.69 (\$71,276.50 - \$28,641.81).
- According to DOC, 42 percent of offenders will re-offend within three years of their release. A recidivism rate of 40 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level under current law (41 offenders x 40% recidivism discount = 16.4 offenders). The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 25 offenders (41 – 16) serving additional time on their sentences. The total additional operating cost for 25 offenders is \$1,065,867.25 (\$42,634.69 x 25).
- There will be an increase in state expenditures for DOH to notify all health care providers. Such increase in expenditures is estimated to be not significant.
- Any impact to the caseloads for the state trial courts can be accommodated within existing judicial resources without an increased appropriation.

**Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.



James W. White, Executive Director

/lsc